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TO RUEHC/SECSTATE WASHDC IMMEDIATE 2995
INFO RUEHNH/AMCONSUL NAHA IMMEDIATE 0034
RHHMUNA/CDRUSPACOM HONOLULU HI IMMEDIATE
RUEKJCS/Joint STAFF WASHINGTON DC IMMEDIATE
RUEKJCS/SECDEF WASHDC IMMEDIATE

UNCLAS SECTION 01 OF 02 MANILA 003913

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E.O. 12958: N/A

TAGS: PREL MARR KCRM CASC RP

SUBJECT: MARINE CASE UPDATE 09/15/06

REF: MANILA 3875 AND PREVIOUS

¶1. SUMMARY. The Defense case in the trial of four Marines accused of raping a Philippine woman commenced the week of September 11 with testimony from the accused LCpl Daniel Smith, and another Marine LCpl Justin Bamberger. The subpoena served to the Embassy requesting presentation by NCIS of the clothes worn by LCpl Smith the night of the alleged incident has been overtaken by events. The Prosecution and the Defense have agreed that the Court will receive the garments and that neither side would challenge that they are the clothes worn by Smith on November 1. On September 17 the complainant and her family publicly called for the replacement of the Prosecution and reportedly sent a letter requesting this to the Philippine Department of Justice. Justice Secretary Raul Gonzalez said September 18 that he had not received this letter but that when he does, he will take their request under advisement. Current U.S. Embassy talking points on this case are provided in paragraph 7 below. END SUMMARY.

¶2. LCpl Smith testified that he met the complainant the night of November 1, that the sexual activity between the two of them was consensual, and that he made an informal arrangement to meet her again the following evening. LCpl Bamberger, a former acquaintance of the complainant, testified that the complainant initially denied she was the victim of rape via text messages received the morning of November 2, and then changed her story via additional text messages to him about eight hours later.

¶3. The subpoena served to the Embassy by the Defense requesting that an NCIS official present in court the garments worn by LCpl Smith the night of November 1 (ref) has been overtaken by events. The Prosecution and the Defense have agreed to let the Court directly receive the clothing with the stipulation that each side agree that they are indeed the clothes worn by LCpl Smith on the night of November 1. No testimony from an NCIS official will be needed. Department can disregard the recommendation in MANILA 3875.

¶4. The Defense is expected to call medical expert Dr. Teresita Sanchez and the other three Marines involved in the alleged incident to testify next week, and perhaps wrap up their case by the week's end. There will then be an opportunity for the Prosecution to commence a rebuttal case, and then the case will proceed to the verdict phase after both the Prosecution and the Defense submit a Memorandum of Law to Judge Pozon. A verdict is not currently expected until mid to late October at the earliest.

¶5. On September 14, the complainant and her mother abruptly walked out of the courtroom immediately before testimony was set to begin for the day. In an impromptu press conference later that afternoon, she publicly called on the Philippine

Department of Justice (DOJ) to replace the prosecutors on the case because she did not believe they had prepared adequately for the cross examination of LCpl Smith. The complainant's mother reportedly sent a letter to the Philippine DOJ requesting replacement of four of the five prosecutors.

¶6. On September 15, Justice Secretary Raul Gonzalez said publicly that he had not seen any letter from the complainant or her family, but that "(o)nce I get that letter, let's see if they have a very, very good reason for such a request," adding, "We cannot just replace the panel because they think these people are incompetent." It is unclear at this time what impact a potential change in prosecutors would have on the timeline for finishing the case. Testimony scheduled for September 15 was postponed until September 18 at the request of the Prosecution.

¶7. Current U.S. Embassy public affairs talking points on this case are as follows:

This has been an emotional and difficult case for everyone involved.

It is the principle of Philippine and American law that anyone accused of a crime is presumed innocent until proven guilty. The U.S. is committed to seeing that justice is served, through a fair and impartial process that can provide for a just outcome.

The U.S. has cooperated with Philippine authorities in accordance with the Visiting Forces Agreement since day one. The case is being tried by a Philippine judge under Philippine jurisdiction.

MANILA 00003913 002 OF 002

¶8. Mission continues to provide security, citizen services, and other support to the defendants. Personnel from III MEF, JUSMAG, the Regional Security Office (RSO), and the Consular Section will continue to attend all court sessions. RSO remains pleased with the extent and quality of security support provided by the mayor's office and police department.

The Consular Section continues to respond to family member inquiries.

KENNEY